

VICTORINO SALCEDO II, PETITIONER, VS. COMMISSION ON ELECTIONS AND ERMELITA CACAO SALCEDO, RESPONDENTS.

G.R. No. 135886. August 16, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Court of the en banc Resolution of the Commission on Elections (Comelec) dated October 6, 1998, which reversed the earlier Resolution issued by its Second Division on August 12, 1998.

From the pleadings and the annexes, the following uncontroverted facts have been established -

On February 18, 1968, Neptali P. Salcedo married Agnes Celiz, which marriage is evidenced by a certified true copy of the marriage contract issued by the Municipal Civil Registrar of Ajuy, Iloilo.[1] Without his first marriage having been dissolved, Neptali P. Salcedo married private respondent Ermelita Cacao in a civil ceremony held on September 21, 1986.[2] Two days later, on September 23, 1986, Ermelita Cacao contracted another marriage with a certain Jesus Aguirre, as shown by a marriage certificate filed with the Office of the Civil Registrar.[3]

Petitioner Victorino Salcedo II and private respondent Ermelita Cacao Salcedo both ran for the position of mayor of the municipality of Sara, Iloilo in the May 11, 1998 elections, both of them having filed their respective certificates of candidacy on March 27, 1998.[4] However, on April 17, 1998, petitioner filed with the Comelec a petition[5] seeking the cancellation of private respondent's certificate of candidacy on the ground that she had made a false representation therein by stating that her surname was "Salcedo." Petitioner contended that private respondent had no right to use said surname because she was not legally married to Neptali Salcedo. On May 13, 1998, private respondent was proclaimed as the duly elected mayor of Sara, Iloilo.[6]

In her answer, private respondent claimed that she had no information or knowledge at the time she married Neptali Salcedo that he was in fact already married; that, upon learning of his existing marriage, she encouraged her husband to take steps to annul his marriage with Agnes Celiz because the latter had abandoned their marital home since 1972 and has not been heard from since that time; that on February 16, 1998, Neptali Salcedo filed a petition for declaration of presumptive death before Branch 66 of the Regional Trial Court of Barotac Viejo, Iloilo, which was granted by the court in its April 8, 1998 decision; that Neptali Salcedo and Jesus Aguirre are one and the same person; and that since 1986 up to the present she has been using the surname "Salcedo" in all her personal, commercial and public transactions.[7]

On August 12, 1998, the Comelec's Second Division ruled, by a vote of 2 to 1,[8] that since there is an existing valid marriage between Neptali Salcedo and Agnes Celiz, the subsequent marriage of the former with private respondent is null and void. Consequently, the use by private respondent of the surname "Salcedo" constitutes material misrepresentation and is a ground for the cancellation of her certificate of candidacy. The pertinent portion of the Resolution reads as follows -

The only issue to be resolved is whether or not the use by respondent of the surname "Salcedo" in her certificate of candidacy constitutes material misrepresentation under Section 78 in relation to Section 74 of the Omnibus Election Code.

Section 78 of the of the (sic) Omnibus Election Code reads:

"A verified petition seeking to deny due course to or cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election."

A candidate's name or surname contained in the certificate of candidacy is required under Section 74 of the Omnibus Election Code and is a material misrepresentation.

Gleaned from the records, respondent admitted that she married Neptali Salcedo on September 21, 1986 in a civil ceremony held in Sara, Iloilo and that she married Jesus Aguirre on September 23, 1986. For the petitioner, this admission is supported by a marriage contract (attached as Annex "C" of the Petition) and a certificate of marriage (attached as Annex "D" of the petition) where the contracting parties are "Jesus Aguirre" and "Ermelita Cacao". On the other hand, respondent tries to create the impression that "Neptali Salcedo" and "Jesus Aguirre" are one and the same persons. This Commission, however, holds the view that regardless of whether Neptali Salcedo and Jesus Aguirre are the same persons, the fact remains irrefutable is that at the time respondent contracted marriage with Neptali Salcedo, the latter has a valid existing marriage with Agnes Celiz and this was sufficiently established by a marriage contract executed on February 18, 1968 and attached to the petition as Annex "E". Respondent cannot seek refuge in her bare assumption that since Agnes Celiz was declared as presumptively dead by the Regional Trial Court of Barotac Viejo, Iloilo, she was free to marry Neptali Salcedo. In point of fact and law, there was considerably NO pronouncement to the effect that the marriage of Neptali Salcedo and Agnes Celiz was annulled by the court and that Salcedo became free to marry respondent.

From all indications, it is to be fairly assumed that since there is an existing valid marriage between Neptali Salcedo and Agnes Celiz, the subsequent marriage of the former with the respondent is null and void. Consequently, the use by the respondent of the surname "Salcedo" constitutes material misrepresentation and is a ground for the cancellation of her certificate of candidacy.

WHEREFORE, this Commission (SECOND DIVISION) RESOLVED, as it hereby RESOLVES, to CANCEL the Certificate of Candidacy of respondent for the position of Municipal Mayor of Sara, Iloilo in the May 11, 1998 elections.[9]

However, in its en banc Resolution dated October 6, 1998, the Comelec overturned its previous resolution, ruling that private respondent's certificate of candidacy did not contain any material misrepresentation. It disposed of the case in this manner -

The record shows that respondent Ermelita C. Salcedo married Neptali Salcedo on September 21, 1986. Under Article 370 of the Civil Code, the respondent may use her husband's surname. Hence, there is no material misrepresentation nor usurpation of another's name.

At any rate, it has been said that the "filing of a certificate of candidacy is a technicality that should be enforced before the election, but can be disregarded after the electorate has made the choosing" (Collado vs. Alonzo, 15 SCRA 526). This rule is in consonance with the policy announced in many decisions that "the rules and regulations, for the conduct of elections, are mandatory before the elections, but when it is sought to enforce them after the elections, they are held to be directory only" (Lambonao vs. Tero, 15 SCRA 716).

Furthermore, the municipal board of canvassers proclaimed the respondent last May 13, 1998, as the duly elect

mayor of the municipality of Sara, Province of Iloilo. Any defect in the respondent's certificate of candidacy should give way to the will of the electorate.

WHEREFORE, the COMMISSION resolves to GRANT the instant Motion for Reconsideration. We REVERSE the resolution (Second Division) promulgated on August 12, 1998, cancelling the certificate of candidacy of the respondent Ermelita C. Salcedo. The proclamation of Ermelita C. Salcedo, as mayor of Sara, Iloilo, remains valid, there being no legal ground to set it aside.[10]

This last resolution of the Comelec prompted petitioner to repair to this Court by way of a petition for certiorari under Rule 65, claiming that public respondent's ruling was issued in grave abuse of its discretion.

Contrary to petitioner's contention, we are of the opinion that the main issue in this case is not whether or not private respondent is entitled to use a specific surname in her certificate of candidacy,[11] but whether the use of such surname constitutes a material misrepresentation under section 78 of the Omnibus Election Code (the "Code") so as to justify the cancellation of her certificate of candidacy. We hold that it does not.

Every person aspiring to hold any elective public office must file a sworn certificate of candidacy.[12] One of the things which should be stated therein is that the candidate is eligible for the office.[13]

In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to section 78 of the Code which states that -

A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

If the petition is filed within the statutory period and the candidate is subsequently declared by final judgment to be disqualified before the election, he shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or the Comelec shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.[14] The fifteen-day period in section 78 for deciding the petition is merely directory.[15]

As stated in the law, in order to justify the cancellation of the certificate of candidacy under section 78, it is essential that the false representation mentioned therein pertain to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate - the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying section 78 of the Code.

In *Abella vs. Larrazabal*, *supra*, a petition was filed with the Comelec seeking the disqualification of private respondent Larrazabal for alleged false statements in her certificate of candidacy regarding residence. The Court held that the challenge made against private respondent's claimed residence was properly classified as a proceeding under section 78, despite the fact that it was filed only on the very day of the election.[16]

Meanwhile, in *Labo vs. Commission on Elections*,[17] the disqualification proceeding filed by respondent pursuant to section 78 of the Code sought to cancel the certificate of candidacy filed by petitioner Ramon Labo, who ran for mayor of Baguio City in the last May 11, 1992 elections, based on the ground that Labo made a false

representation when he stated therein that he is natural-born citizen of the Philippines. The Court, speaking through Justice Abdulwahid A. Bidin, held that Labo, having failed to submit any evidence to prove his reacquisition of Philippine citizenship, is not a Filipino citizen and respondent Comelec did not commit any grave abuse of discretion in cancelling his certificate of candidacy. The Court went on to say that the possession of citizenship, being an indispensable requirement for holding public office, may not be dispensed with by the fact of having won the elections for it "strikes at the very core of petitioner Labo's qualification to assume the contested office."

A similar issue was dealt with in the *Frivaldo vs. Commission on Elections* cases[18] wherein Frivaldo's qualification for public office was questioned in a petition filed by petitioner Raul R. Lee, praying that Frivaldo be disqualified from seeking or holding any public office or position and that his certificate of candidacy be cancelled by reason of his not yet being a citizen of the Philippines. The Court held that Frivaldo had reacquired Philippine citizenship by virtue of his repatriation under P.D. 725 and was qualified to hold the position of governor of Sorsogon.

The Court has likened a proceeding under section 78 to a quo warranto proceeding under section 253 since they both deal with the qualifications of a candidate. In the case of *Aznar vs. Commission on Elections*,[19] wherein a petition was filed asking the Comelec to disqualify private respondent Emilio Osmena on the ground that he does not possess the requisite Filipino citizenship, the Court said -

There are two instances where a petition questioning the qualifications of a registered candidate to run for the office for which his certificate of candidacy was filed can be raised under the Omnibus Election Code (B.P. Blg. 881), to wit:

"(1) Before election, pursuant to Section 78 thereof which provides that:

`Section 78. Petition to deny due course or to cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material misrepresentation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

and

"(2) After election, pursuant to Section 253 thereof, viz:

`Sec. 253. Petition for quo warranto. - Any voter contesting the election of any Member of the Batasang Pambansa[20], regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Commission within ten days after the proclamation of the results of the election."

(emphasis supplied)

The only difference between the two proceedings is that, under section 78, the qualifications for elective office are misrepresented in the certificate of candidacy and the proceedings must be initiated before the elections, whereas a petition for quo warranto under section 253 may be brought on the basis of two grounds - (1) ineligibility or (2) disloyalty to the Republic of the Philippines, and must be initiated within ten days after the proclamation of the election results. Under section 253, a candidate is ineligible if he is disqualified to be elected to office,[21] and he is disqualified if he lacks any of the qualifications for elective office.

In still another case, where the petition to disqualify petitioner was based upon an alleged false representation in the certificate of candidacy as to the candidate's age, the Court once again drew a parallel between a petition for quo warranto and a petition to cancel a certificate of candidacy when it stated that "...if a person qualified to file a

petition to disqualify a certain candidate fails to file the petition within the 25-day period prescribed by Section 78 of the Code for whatever reasons, the elections laws do not leave him completely helpless as he has another chance to raise the disqualification of the candidate by filing a petition for quo warranto within ten (10) days from the proclamation of the results of the election, as provided under Section 253 of the Code." [22]

Therefore, it may be concluded that the material misrepresentation contemplated by section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave - to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. [23] It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

Petitioner has made no allegations concerning private respondent's qualifications to run for the office of mayor. Aside from his contention that she made a misrepresentation in the use of the surname "Salcedo," petitioner does not claim that private respondent lacks the requisite residency, age, citizenship or any other legal qualification necessary to run for a local elective office as provided for in the Local Government Code. [24] Thus, petitioner has failed to discharge the burden of proving that the misrepresentation allegedly made by private respondent in her certificate of candidacy pertains to a material matter.

Aside from the requirement of materiality, a false representation under section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." [25] In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of the provision.

There is absolutely no showing that the inhabitants of Sara, Iloilo were deceived by the use of such surname by private respondent. Petitioner does not allege that the electorate did not know who they were voting for when they cast their ballots in favor of "Ermelita Cacao Salcedo" or that they were fooled into voting for someone else by the use of such name. It may safely be assumed that the electorate knew who private respondent was, not only by name, but also by face and may have even been personally acquainted with her since she has been residing in the municipality of Sara, Iloilo since at least 1986. [26] Bolstering this assumption is the fact that she has been living with Neptali Salcedo, the mayor of Sara for three consecutive terms, since 1970 and the latter has held her out to the public as his wife. [27]

Also arguing against petitioner's claim that private respondent intended to deceive the electorate is the fact that private respondent started using the surname "Salcedo" since 1986, several years before the elections. In her application for registration of her rice and corn milling business filed with the Department of Trade and Industry in 1993, private respondent used the name "Ermelita Cacao Salcedo." [28] From 1987 to 1997, she also used the surname "Salcedo" in the income tax returns filed by herself and by Neptali Salcedo. [29] The evidence presented by private respondent on this point, which has remained uncontested by petitioner, belie the latter's claims that private respondent merely adopted the surname "Salcedo" for purposes of improving her chances of winning in the local elections by riding on the popularity of her husband.

Thus, we hold that private respondent did not commit any material misrepresentation by the use of the surname "Salcedo" in her certificate of candidacy.

Having disposed of the major issues, we will now proceed to tackle the secondary issues raised in the petition. Petitioner claims that the following circumstances constitute grave abuse of discretion on the part of the Comelec: (1) the October 6, 1998 en banc Resolution of the Comelec, sustaining the validity of private respondent's

certificate of candidacy, merely duplicated the dissenting opinion of Commissioner Desamito of the Second Division in the August 12, 1998 Resolution; (2) Chairman Pardo, the ponente of the en banc Resolution, and Commissioner Guiani, both members of the Second Division who ruled in favor of petitioner in the August 12, 1998 Resolution, reversed their positions in the en banc resolution; and (3) the en banc Resolution was promulgated on the very same day that Chairman Pardo took his oath of office as Associate Justice of the Supreme Court.

Petitioner does not indicate what legal provision or equitable principle the Comelec transgressed by the commission of these acts. We find nothing legally assailable with the Comelec's adoption in its en banc Resolution of the reasoning contained in the dissenting opinion of Commissioner Desamito; nor is the en banc Resolution rendered infirm by the mere change of position adopted by Chairman Pardo and Guiani of the Second Division. Precisely, the purpose of a motion for reconsideration is to allow the adjudicator a second opportunity to review the case and to grapple with the issues therein, deciding anew a question previously raised.[30] There is no legal proscription imposed upon the deciding body against adopting a position contrary to one previously taken.

Finally, the fact that the decision was promulgated on the day Chairman Pardo, the ponente of the en banc Resolution, took his oath of office as Associate Justice of the Supreme Court does not give ground to question the Comelec decision for then Chairman Pardo enjoys the presumption of regularity in the performance of his official duties, a presumption which petitioner has failed to rebut. At any rate, the date of promulgation is not necessarily the date of signing.

In upholding the validity of private respondent's certificate of candidacy, we reiterate that "[t]he sanctity of the people's will must be observed at all times if our nascent democracy is to be preserved. In any challenge having the effect of reversing a democratic voice, expressed through the ballot, this Court should be ever so vigilant in finding solutions which would give effect to the will of the majority, for sound public policy dictates that all elective offices are filled by those who have received the highest number of votes cast in an election. When a challenge to a winning candidate's qualifications however becomes inevitable, the ineligibility ought to be so noxious to the Constitution that giving effect to the apparent will of the people would ultimately do harm to our democratic institutions." [31] Since there appears to be no dispute as to private respondent's qualifications to hold the office of municipal mayor, the will of the electorate must prevail.

WHEREFORE, the Court hereby AFFIRMS the en banc Resolution of the Commission on Elections dated October 6, 1998 denying the petition to cancel private respondent's certificate of candidacy. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and Ynares-Santiago, JJ., concur.

Puno, J., in the result.

Pardo, J., no part.

[1] Annex E of the Petition, Rollo, p. 56.

[2] Rollo, p. 65.

[3] Rollo, p. 57.

[4] Annexes C and D of the Petition, Rollo, pp. 48-49.

[5] Docketed as SPA No. 98-143 and entitled "Victorino Salcedo II vs. Ermelita C. Salcedo."

[6] Rollo, p. 45.

[7] Rollo, pp. 59-63.

[8] Commissioner Japal M. Guiani and Chairman Bernardo P. Pardo (now Supreme Court Associate Justice) formed the majority opinion. Commissioner Julio F. Desamito dissented.

[9] Rollo, pp. 34-39.

[10] Rollo, pp. 45-46.

[11] Rollo, p. 17.

[12] Batas Pambansa Blg. 881 (BP 881), sec. 73.

[13] BP 881, Section 74 provides that -

The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if he has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

[14] Republic Act No. 6646, secs. 6, 7.

[15] *Abella vs. Larrazabal*, 180 SCRA 509 (1989); *Aquino vs. Commission on Elections*, 248 SCRA 400 (1995).

[16] See *Abella vs. Comelec*, 201 SCRA 253 (1991).

[17] 211 SCRA 297 (1992).

[18] 257 SCRA 727 (1996); 232 SCRA 785 (1994); 174 SCRA 245 (1989).

[19] 185 SCRA 703 (1990).

[20] Sec. 17, Art. XXX of the 1987 Constitution has transferred the jurisdiction to decide quo warranto proceedings concerning any member of Congress to the Electoral Tribunal.

[21] Topacio vs. Paredes, 23 Phil. 238 (1912).

[22] Loong vs. Commission on Elections, 216 SCRA 760 (1992).

[23] Abella vs. Larrazabal, supra.

[24] R.A. No. 7160, section 39. Qualifications. -

(a) An elective local official must be a citizen of the Philippines; a registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.

(b) Candidates for the position of governor, vice-governor or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities must be at least twenty-three (23) years of age on election day.

(c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least twenty-one (21) years of age on election day.

(d) Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan must be at least eighteen (18) years of age on election day.

(e) Candidates for the position of punong barangay or member of the sangguniang barangay must be at least eighteen (18) years of age on election day.

(f) Candidates for the sangguniang kabataan must be at least fifteen (15) years of age but not more than twenty-one (21) years of age on election day.

[25] Romualdez-Marcos vs. Commission on Elections, 248 SCRA 300 (1995).

[26] Rollo, p. 63.

[27] Rollo, pp. 62, 129.

[28] Rollo, p. 75.

[29] Rollo, pp. 78-88.

[30] Peoples Bank and Trust Co. vs. Philippine National Bank, G.R. No. L-3405 (1951).

[31] Aquino vs. Commission on Elections, supra.

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